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September 18, 2009

Ms. Barbara Nann, Attorney  
U.S. Environmental Protection Agency, Region 6  
Office of Regional Counsel  
Superfund Branch (6RC-S)  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

***Via Email & Certified Mail/  
Return Receipt Requested***

Re: Joint Good Faith Offer  
San Jacinto River Waste Pits, Harris County, Texas  
SSID No. 06ZQ, EPA ID No. TXN000606611

Dear Ms. Nann:

In response to the special notice letters dated July 17, 2009, from the United States Environmental Protection Agency ("EPA") Region 6 to McGinnes Industrial Maintenance Corporation ("MIMC") and to International Paper Company ("IPC"), MIMC and IPC (collectively "the Parties") hereby submit this Good Faith Offer in accordance with Section VI of EPA's special notice letters with regard to the Site, as such term is defined and discussed below.<sup>1</sup>

While submitted by counsel for MIMC, this letter reflects the position of IPC with respect to the Good Faith Offer. Albert Axe is not representing IPC in any capacity, but both IPC and MIMC felt this joint letter was appropriate at this juncture.

1. Unconditional Statement that MIMC and IPC are willing to perform and pay for a Engineering Evaluation/Cost Analysis (Removal Action) of the San Jacinto Waste Pits original source site, i.e., the 20.6 acre Site, and a Focused Remedial Investigation (FRI) of the Area North of I-10 in the San Jacinto River Basin.

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<sup>1</sup> Nothing in this letter should be viewed as an admission by MIMC or IPC of the factual and legal statements made in EPA's special notice letters.

MIMC and IPC, subject to the negotiation of acceptable terms of an Administrative Order on Consent ("AOC") and Statement of Work ("SOW"), are willing to perform a Engineering Evaluation/Cost Analysis of the Site and a Focused Remedial Investigation, as defined and discussed below in Section A.

A. Proposed removal action

1. Engineering Evaluation/Cost Analysis ("EE/CA")

The Parties propose to enter into an AOC that would authorize them to move forward expeditiously with a non-time-critical removal action to complete the design and construction of a confined disposal facility ("CDF") with stabilized berms along the perimeter of the approximate 11.7 acre Waste Pits located at the 20.6 acre Site as defined in the AOC proposed by EPA and attached as Exhibit 3 to the Special Notice Letter. The purpose of this removal action would be to cut off any alleged ongoing releases of hazardous substances from the original Waste Pit area. This removal action will be completed under an EE/CA and will include the investigation, design, and construction of a CDF. The EE/CA analysis will include Site characterization and streamlined risk assessment for the impoundment area, identification of removal action objectives, identification of removal action alternatives, a comparative analysis of removal action alternatives, and a recommended removal action alternative. The EE/CA analysis will be followed by a Design Analysis Report, which will include the engineering design drawings for the removal action.

2. Focused Remedial Investigation

Parallel to the design and construction of the CDF at the Site, as described above, the Parties will perform an EE/CA and FRI. The FRI will be conducted in the areas to the West, Northwest, North, Northeast, and East of the Site, all North of Interstate 10. This investigation will accomplish the following goals:

- The FRI will determine the existence and nature of any alleged release that may be occurring from the 20.6 acre Site, north of Interstate 10.
- The FRI will result in the development of information regarding the quantity of contaminated sediments that may require disposal in the CDF. This will assist in the final design of the CDF.
- The FRI will assist the EPA and Parties in further assessing the impact of dredging on the original 20.6 acre Site. This should assist EPA in identifying and taking appropriate action with regard to additional Potentially Responsible Parties ("PRPs").
- The FRI will assist EPA in evaluating the proper scope of additional investigative work, if any, that may be necessary relative to the 20.6 acre Site

and the separate source area apparently created on property West of the Site, as discussed below.

B. Definition of Site

MIMC and IPC agree with the definition of the "Site" contained in the proposed AOC contained in Exhibit 3 to the Special Notice Letter, i.e., an "approximately 20.6 acre tract of land bounded on the south by Interstate Highway 10, on the east by the San Jacinto River main channel, and on the north and west by shallow water off the River's main channel..."

At a meeting in EPA Region 6's offices between EPA, IPC and MIMC on August 11, 2009 ("August 11 Meeting"), MIMC presented information to EPA demonstrating that dredging activity conducted on the property believed to be owned by Big Star Barge & Boat Company, Inc. ("Big Star") to the north and west of the Site and now largely inundated by the San Jacinto River (labeled as "B" and "C" on the attached map – Exhibit 1) apparently has impacted area north of I-10, including the Site. The presentation showed that the dredging activity conducted in the late 1997-1998 time frame apparently resulted in the removal of the levee and waste material on the Northwest corner of the Waste Pits and the disposal of those materials on the strip of Big Star property labeled as "C" on the attached Exhibit 1. The dredging activity also apparently contributed to the erosion and removal of the levee on the Northeast side of the Site, resulting in the inundation of the eastern portion of the Site by the San Jacinto River sometime after 1998 and subsequent distribution of previously confined waste to the northwest and southeast of the Waste Pits.

This dredging activity appears to have been conducted pursuant to Permit No. 19284 issued by the US Army Corps of Engineers ("USACOE") to Houston International Terminal ("HIT"), an affiliate of Big Star. Records obtained from USACOE show that the dredging conducted pursuant to Permit No. 19284 was primarily conducted by MegaSand Enterprises, Inc. under contract with HIT and/or Big Star. The President of Big Star and HIT, Captain Jack Roberts, had actual knowledge of the waste disposal operations conducted on the Site, as evidenced by a transcribed statement made by Captain Roberts to EPA, a copy of which is in EPA's files for the Site. The area permitted by the USACOE for dredging pursuant to Permit No. 19284 did not include the Site, yet the dredging activity appears to have gone outside the permitted area and appears to have directly impacted the Site. Based on the aerial photos shown at the August 11 Meeting, the Waste Pit levees were intact until the dredging commenced in the 1997-1998 time frame. Moreover, the Big Star property located North and West of the Site where the alleged dredging activity occurred and where dioxin concentrations have been documented, is upstream of the Site.

It also appears that the areas to the South and East of the Site may also have been impacted by the alleged dredging activity. Based on the aerial photos presented at the August 11 Meeting, the Waste Pit levees were intact until the alleged dredging

commenced. Furthermore, the presentation showed that the alleged dredging activity apparently created a channel in the San Jacinto River that may have resulted in the erosion and deterioration of the levees on the Northeast side of the Waste Pits.

As a result of the alleged impact of the dredging activity in the area of the Site, Big Star, HIT, and MegaSand (hereinafter referred to collectively as the "Dredging PRPs") appear to qualify as PRPs for a new dioxin source area created on the Big Star property labeled as "B" and "C" on the attached Exhibit 1. Big Star appears to be a PRP for this new source area since it is both a current and past owner of the property. HIT, as the apparent permittee for the dredging activities in the area, is a past operator and an arranger. HIT's president, Captain Jack Roberts, knew about the waste disposed of on the Site yet still allowed that material to be dredged and deposited at another location upstream from the Site. MegaSand, the company that apparently dredged the area, is a generator, arranger, transporter and operator at this new site.

The Dredging PRPs appear to have created a new dioxin source area that is likely indistinguishable from the Site by fingerprinting, but is geographically divisible from the original 20.6 acre Site. The evidence appears to show that newly generated waste, which had previously been securely disposed of at the Site, was moved and re-deposited in this new source area up river of the Site and that contamination of the San Jacinto River apparently resulted from a release of dioxin from this new source area.

MIMC and IPC are not responsible under CERCLA for this new source area or the contamination emanating from this area because they contend as to their respective companies:

- that they never owned or operated the new source area located at the Big Star property.
- that they did not arrange for the disposal of wastes or transported waste to, the new source area located on the Big Star property.
- their actions have not resulted in releases of hazardous substances from the Site that have impacted the Big Star property to the North or West of the Site because such property is upstream of the Site.
- the hazardous substances located at the new source area and other property downstream of this area was newly generated by the dredging activities.

Thus, the Parties urge EPA to move forward with the preparation and mailing of Notice Letters and CERCLA §104(e) requests for information to the Dredging PRPs.

C. Access

MIMC contends that neither the Site nor the area adjacent to the Site is owned by MIMC. IPC contends that neither the Site nor the area adjacent to the Site is owned by IPC. Therefore, in order to move forward expeditiously to fence and contain the Site and investigate the areas adjacent to the Site, the Parties propose that EPA use its removal action authority under Sections 104 and 122 of CERCLA to obtain access for the Parties to effectuate the removal actions described herein. If EPA does not take such action, valuable time will be wasted and expenses incurred attempting to resolve the access issue.

MIMC has previously provided EPA with a copy of the deed to the Site, showing ownership in the name of Virgil C. McGinnes, Trustee. MIMC contends that no trust agreement or other writing or evidence has been located evidencing intent on the part of Mr. McGinnes to purchase or hold the Site for the benefit of another party. MIMC further contends that the Site was not subsequently conveyed out of any "trust" and because no evidence of a trust exists, record title to the Site is deemed to be in the named trustee (i.e., Virgil C. McGinnes). Virgil C. McGinnes is now deceased. The Site was not included in his Estate; thus, current ownership of the Site is unclear. In this situation, it is important for EPA to use its legal authority to gain access to the Site so that work at the Site can commence.

IPC has insufficient information regarding the ownership of the Site (other than its own knowledge that it does not own the Site) to address MIMC's above statements and assertions.

With respect to the property adjacent to the Site, MIMC has provided EPA information showing that Big Star purportedly owns several tracts of property adjacent to the Site to the North and West (as shown on the attached map). However, much of this property, particularly the area labeled as "B" on Exhibit 1, is now inundated by the San Jacinto River. Therefore, this area now is arguably owned by the Port of Houston Authority ("POHA"). Given this situation, the Parties will attempt to contact both Big Star and the POHA to try to arrange an access agreement for the EE/CA work and FRI and will report back to EPA on the results of their efforts. If the Parties are unsuccessful in their efforts to gain access to these off-site areas, EPA will be asked to utilize its CERCLA authority to gain access for the proposed work.

2. Proof of Technical Skill

The Parties currently intend to utilize the services of Anchor QEA to perform the proposed removal action and FRI. A statement of Anchor's qualifications is attached as Attachment 1.

3. Oversight Response Costs

The Parties are willing to pay EPA for oversight response costs related to the Site and for future costs to be paid by EPA in overseeing the conduct of the proposed work at the Site that are not inconsistent with the National Contingency Plan.

4. MIMC's and IPC's Financial Responsibility

Proof of MIMC's ability to pay for the Removal Action and FRI is attached as Attachment 2. IPC in turn refers EPA to its filings with the Securities and Exchange Commission, including its form 10-K filed February 26, 2009, for the fiscal year ended December 31, 2009, which includes, *inter alia*, a five year financial summary.

5. Schedule

The Parties are willing to begin work on the Removal Action of the Site and the FRI of the area nearby the Site, as defined in Section A, in keeping with a schedule to be detailed in a finally negotiated Removal Action and FRI AOC and SOW. This removal action will prevent any alleged release that may be occurring from the original source site, i.e., the 20.6 acre Site, and the FRI will provide information necessary for future decisions relative to actions to be taken in the area.

6. General Work Plan

A general work plan describing how and when the Parties will do the major parts of the EE/CA on the Site and the focused FRI in the area North of Interstate 10 is attached as Attachment 3.

7. MIMC's and IPC's Representatives

MIMC will be represented in negotiations by the following:

Albert R. Axe, Jr.	Francis E. Chin	March Smith
Winstead PC	MIMC	MIMC
401 Congress Avenue	1001 Fannin Street	1000 Parkwood Circle
Suite 2100	Suite 4000	Suite 700
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512/370-2806	713/328-7187	770/805-3520

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IPC will be represented in negotiations by the following:

John F. Cermak, Jr.  
Baker Hostetler LLP  
12100 Wilshire Boulevard  
Suite 1500  
Los Angeles, CA 90025  
310/442-8864

Elton L. Parker  
International Paper Company  
6400 Poplar Avenue  
Memphis, TN 38197  
901/419-4724

Please let me know if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Albert R. Axe". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Albert R. Axe, Jr.

ARA:ltm

Enclosures

cc: Elton L. Parker, IPC  
John F. Cermak, Jr., IPC  
Francis Chin, MIMC  
March Smith, MIMC  
David Keith, Anchor QEA